

## EXHIBIT 2

**REDACTED**

**From:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com) on behalf of [Alex Frawley](#)  
**To:** [Sexauer, Kenneth Edward](#)  
**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com); [OpenAICopyright](#);  
[openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); [KVP-OAI](#)  
**Subject:** RE: [NYTimes] NYT 7/31 M&C Follow-Up  
**Date:** Tuesday, August 27, 2024 8:28:27 PM  
**Attachments:** [image001.png](#)

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EXTERNAL Email

Ken,

We disagree about your characterization of our search term proposal. We have narrowed our proposal through three sets of revisions, over two months, and the current proposal is more than reasonable.

We will not provide a document demonstrating which specific request(s) for production relate to each proposed search term because that information is clear from the terms themselves and doing so will only further delay this process. OpenAI waited until a July 31 call to make this request, approximately six weeks after The Times made its initial search term proposal. OpenAI has never objected to any of The Times's proposed terms on the ground of relevance. OpenAI's only objection has been that the hit counts are too high. The parties are clearly at impasse on search terms, and to move the case forward, The Times will move to compel OpenAI to apply its proposal.

As for your second question, the current answer is 235,267.

Best,  
Alex

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**From:** Sexauer, Kenneth Edward (via NYT-AI-SG-Service list) <NYT-AI-SG-Service@simplelists.susmangodfrey.com>  
**Sent:** Monday, August 12, 2024 8:39 AM  
**To:** Alex Frawley <AFrawley@susmangodfrey.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com  
**Cc:** OpenAICopyright <OpenAICopyright@mofo.com>; openaicopyrightlitigation.lwteam@lw.com; KVPOAI@keker.com  
**Subject:** [NYTimes] NYT 7/31 M&C Follow-Up

EXTERNAL Email

Counsel,

We have attached an updated search term hit report that reflects the hit count including the four additional custodians we discussed during the parties' 7/31 meet and confer. As you will see, the hit count (including families and excluding already-reviewed documents) is nearly [REDACTED]. Reviewing this enormous volume of documents would be highly burdensome and disproportionate to the needs of the case.

We would reiterate our two requests from the conference:

1. OpenAI requests that the New York Times provide a document demonstrating which specific request(s) for production relate to each of its proposed search terms.
2. OpenAI requests that the New York Times state how many documents it has reviewed to date as a part of its own review of documents for responsive discovery in this litigation.

Best,  
Ken

**Ken Sexauer**

Associate

[ksexauer@mofo.com](mailto:ksexauer@mofo.com)

T: +1 (212) 336-4090

Morrison Foerster  
250 West 55th Street  
New York, NY 10019-9601

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**From:** [Sexauer, Kenneth Edward \(via NYT-AI-SG-Service list\)](#)  
**To:** [Alex Frawley](#); [openaicopyrightlitigation.lwteam@lw.com](#); [OpenAICopyright](#); [KVP-OAI](#)  
**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](#); [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](#); [#NewYorkTimes-Microsoft-FDBR](#)  
**Subject:** RE: NYT / OAI: Search Terms  
**Date:** Wednesday, July 24, 2024 8:19:41 PM  
**Attachments:** [image001.png](#)  
[24.07.24 NYT Response Search Term Hit Report.xlsx](#)

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**EXTERNAL Email**

Alex,

OpenAI rejects the Times proposed search terms. A hit report is attached. While Plaintiff's last set of terms hit on [REDACTED], the new terms hit on [REDACTED]. This relatively minor reduction in the hit count does not alter our view that review of the documents that hit on the proposed terms would be overly burdensome and disproportionate to the needs of the case—especially considering that while OpenAI's has already produced [REDACTED], the Times has only produced 186,428 pages amounting to 17.93 GB of data.

As we stated in our previous correspondence, we are available to meet and confer regarding both parties' proposed search terms and Plaintiffs' failure to meet its substantial completion deadline this Friday (7/26). When are you available that day?

Best,  
Ken

**Ken Sexauer**  
Associate  
[ksexauer@mofo.com](mailto:ksexauer@mofo.com)  
T: +1 (212) 336-4090

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**From:** Sexauer, Kenneth Edward <KSexauer@mofo.com>  
**Sent:** Monday, July 22, 2024 11:33 PM  
**To:** Alex Frawley <AFrawley@susmangodfrey.com>; openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright <OpenAICopyright@mofo.com>; KVP-OAI <KVPOAI@keker.com>  
**Cc:** NYT-AI-SG-Service@simplelists.susmangodfrey.com; NewYorkTimes\_Microsoft\_OHS@orrick.com; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>  
**Subject:** RE: NYT / OAI: Search Terms

Alex,

We have asked our vendor to generate a search term hit report for your new proposal. We will provide you with a hit report—including the newly added terms as a courtesy—when the data is

processed. However, we reserve the right to reject new terms proposed in the future without providing a hit count.

We are available to meet and confer Thursday (7/25) or Friday (7/26). Both parties' proposed ESI orders give a Producing Party three business days to reject a new proposal or five business days to make a counterproposal. Therefore, OpenAI is under no obligation to accept, reject, or propose alternatives to the Times' search terms by tomorrow. In any event, we can be prepared to discuss ways that Plaintiff can propose terms in ways more likely to achieve a mutually agreeable set of terms on the dates we suggest.

In addition, on our next meet and confer, we would like to discuss the Times' document production to date. Specifically, you should also prepare to discuss the Times' failure to meet its substantial completion deadline, about which we will be emailing you separately.

With respect to the search terms OpenAI has proposed to the Times, please proceed with running the 15 search terms in OpenAI's counterproposal of July 8th that the Times accepted. We will follow up with additional proposed terms in light of the Times' positions with respect to disputed terms.

Best,  
Ken

**Ken Sexauer**

Associate

[ksexauer@mofo.com](mailto:ksexauer@mofo.com)

T: +1 (212) 336-4090

**MORRISON  
FOERSTER**

---

**From:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>

**Sent:** Friday, July 19, 2024 5:21 PM

**To:** Sexauer, Kenneth Edward <[KSexauer@mofo.com](mailto:KSexauer@mofo.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>; KVP-OAI <[KVPOAI@keker.com](mailto:KVPOAI@keker.com)>

**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com); [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](mailto:NewYorkTimes_Microsoft_OHS@orrick.com); #NewYorkTimes-Microsoft-FDBR <[NewYorkTimes-Microsoft-FDBR@faegredrinker.com](mailto:NewYorkTimes-Microsoft-FDBR@faegredrinker.com)>

**Subject:** RE: NYT / OAI: Search Terms

**External Email**

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Hi Ken,

The Times has made slight revisions to the search term proposal.

Thank you for the offer to meet and confer about these terms. When are you available on Tuesday? We ask that you be prepared to discuss which of these terms that OpenAI is willing to accept and what counter-proposals OpenAI is making for terms it is rejecting.

We disagree with your statement that OpenAI can refuse to provide hit counts for search terms that we propose. Please provide the hit counts. The Times reserves the right to propose additional terms, including based on our review of the documents that Defendants have produced and will produce.

Best,  
Alex

**Alexander P. Frawley | Susman Godfrey LLP**

One Manhattan West, 50th Floor | New York, NY 10001  
212.729.2044 (office) | 917.599.6613 (cell)  
[afrawley@susmangodfrey.com](mailto:afrawley@susmangodfrey.com) | [www.susmangodfrey.com](http://www.susmangodfrey.com)

---

**From:** Sexauer, Kenneth Edward <[KSexauer@mofo.com](mailto:KSexauer@mofo.com)>

**Sent:** Tuesday, July 16, 2024 7:43 PM

**To:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>; KVP-OAI <[KVPOAI@keker.com](mailto:KVPOAI@keker.com)>

**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com); [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](mailto:NewYorkTimes_Microsoft_OHS@orrick.com); #NewYorkTimes-Microsoft-FDBR <[NewYorkTimes-Microsoft-FDBR@faegredrinker.com](mailto:NewYorkTimes-Microsoft-FDBR@faegredrinker.com)>

**Subject:** RE: NYT / OAI: Search Terms

**EXTERNAL Email**

Counsel,

A search term hit report reflecting the Times' updated proposed search terms as applied to current OpenAI custodians is attached. Including family documents and excluding documents OpenAI has already reviewed as a part of this litigation, the Times' new proposal yields [REDACTED]. Because review of such a large number of documents would be overly burdensome and disproportionate to the needs of the case, OpenAI rejects the proposal and requests that Plaintiff propose a narrower set of terms.

As OpenAI noted in its previous correspondence, eight of the Times' initially proposed terms could not be run because they triggered an error in our system. The Times' proposed modifications avoided triggering this error. The corresponding hit counts are included in the report. Also included is a hit count for one term that was inadvertently omitted from our previous report, as revised most recently by the Times ("giraffe"). Regarding your inquiry about whether it is possible to run the "CC" term without hitting on carbon copy emails, our vendor was unable to do so but recommended running "CC NOT w/25 (.com OR (To AND BCC))" as an alternative. As you will see, however, this term still hits on some carbon copy email references. Furthermore, one of your searches surpassed the 450-character search term limit for our database. Our Vendor broke that search into the

following four parts in an attempt to accommodate your request:

- ("validation data" OR "The Pile" OR preprocessing OR "test set" OR "training set" OR "evaluation set" OR "text extraction" OR "semantic analysis" OR "source attribution") w/25 (rule\* OR guidance\* OR weight\* OR perplexity OR ROUGE OR F1 OR classif\* OR benchmark OR whitelist OR blacklist OR safeguard\* OR guardrail\* OR quality OR recitation\* OR scrap\* OR checkpoint)
- (\*train\* OR "fine tun\*" OR fine-tun\* OR finetun\* OR instruct\* OR \*param\* OR corpus OR corpora OR token\* OR RLHF OR "proximal policy optimization" OR "data set" OR dataset\* OR "test data") w/25 (discriminator OR curricul\* OR classif\* OR \*score\* OR frequen\* OR contamination\* OR duplicat\* OR regression\* OR cluster\* OR feature\* OR label\* OR attribute\* OR categ\* OR value\* OR variable\* OR inference OR distillation OR recipe\*)
- (\*train\* OR "fine tun\*" OR fine-tun\* OR finetun\* OR instruct\* OR \*param\* OR corpus OR corpora OR token\* OR RLHF OR "proximal policy optimization" OR "data set" OR dataset\* OR "test data") w/25 (rule\* OR guidance\* OR weight\* OR perplexity OR ROUGE OR F1 OR classif\* OR benchmark OR whitelist OR blacklist OR safeguard\* OR guardrail\* OR quality OR recitation\* OR scrap\* OR checkpoint)
- ("validation data" OR "The Pile" OR preprocessing OR "test set" OR "training set" OR "evaluation set" OR "text extraction" OR "semantic analysis" OR "source attribution") w/25 (discriminator OR curricul\* OR classif\* OR \*score\* OR frequen\* OR contamination\* OR duplicat\* OR regression\* OR cluster\* OR feature\* OR label\* OR attribute\* OR categ\* OR value\* OR variable\* OR inference OR distillation OR recipe\*)

We also noted that the Times included terms not previously proposed or related to previously proposed terms. We do not agree that The Times is entitled to inject new terms into this procedure, where no justification has been given. We will not provide counts for those terms, and they are rejected.

We are available to meet and confer.

Finally, we interpret your question about RAG as one concerning custodians rather than search terms. We will respond to that inquiry in due course.

Best,  
Ken

**Ken Sexauer**

Associate

[ksexauer@mofo.com](mailto:ksexauer@mofo.com)

T: +1 (212) 336-4090



---

**From:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>  
**Sent:** Thursday, July 11, 2024 9:43 PM  
**To:** [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>; KVP-OAI <[KVPOAI@keker.com](mailto:KVPOAI@keker.com)>  
**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com); [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](mailto:NewYorkTimes_Microsoft_OHS@orrick.com); #NewYorkTimes-Microsoft-FDBR <[NewYorkTimes-Microsoft-FDBR@faegredrinker.com](mailto:NewYorkTimes-Microsoft-FDBR@faegredrinker.com)>  
**Subject:** NYT / OAI: Search Terms

**External Email**

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Counsel,

Attached please find a revised proposal from The Times for search terms to be run on OpenAI's custodians' ESI. For terms we marked "as is", The Times asks that OpenAI apply those terms and begin reviewing documents while the parties negotiate the remaining search terms. For search terms that we revised and added, please send us updated hit counts. The Times reserves the right to propose additional or revised search terms.

We noticed the hit counts for the "RAG" terms are low, which suggests that none of the custodians OpenAI selected work on RAG. Is that right? Can you please let us know which OAI employees work on RAG so we can assess whether those employees should also be custodians?

Thank you.

Best,  
Alex

**Alexander P. Frawley | Susman Godfrey LLP**  
One Manhattan West, 50th Floor | New York, NY 10001  
212.729.2044 (office) | 917.599.6613 (cell)  
[afrawley@susmangodfrey.com](mailto:afrawley@susmangodfrey.com) | [www.susmangodfrey.com](http://www.susmangodfrey.com)

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**From:** [Sexauer, Kenneth Edward](#)  
**To:** [Alex Frawley](#)  
**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](#); [KVP-OAI](#); [openaicopyrightlitigation.lwteam@lw.com](#); [OpenAICopyright](#); [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](#); [#NewYorkTimes-Microsoft-FDBR](#)  
**Subject:** RE: NYT v. Microsoft et al.  
**Date:** Monday, July 8, 2024 5:36:18 PM  
**Attachments:** [image001.png](#)

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**EXTERNAL Email**

Alex,

Thank you for your response. While we disagree with several statements in your email, we do not address them here. Instead, we can discuss on a call. OpenAI would be happy to meet and confer regarding the issues you raised. However, we are not available today or tomorrow. Is your team available on Thursday or Friday? If so, what times would work?

Best,

Ken

**Ken Sexauer**

Associate

[ksexauer@mofo.com](mailto:ksexauer@mofo.com)

T: +1 (212) 336-4090

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**From:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>  
**Sent:** Wednesday, July 3, 2024 7:07 PM  
**To:** Sexauer, Kenneth Edward <[KSexauer@mofo.com](mailto:KSexauer@mofo.com)>  
**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](#); [KVP-OAI <KVPOAI@keker.com>](#); [openaicopyrightlitigation.lwteam@lw.com](#); [OpenAICopyright <OpenAICopyright@mofo.com>](#); [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](#); [#NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>](#)  
**Subject:** RE: NYT v. Microsoft et al.

**External Email**

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Hi Ken,

The Times has narrowed its proposal for additional OAI custodians to the below list. Will OpenAI agree to make these individuals custodians? If not, please let us know when you are available for a meet and confer on Monday or Tuesday.

Sam Altman

Greg Brockman  
Mira Murati  
Henrique Ponde de Oliveira Pinto  
Peter Welinder  
James Betker  
Bianca Martin  
William (Liam) Fedus  
Ryan Lowe  
Vinnie Monaco  
Lillian Weng  
Johannes Heidecke  
Daniel Kokotajlo  
William Saunders  
Ilya Sutskever

Your email below incorrectly suggests the parties have “agreed” to a 10-custodian limit “in the absence of a court order.” There is no such agreement. It also does not make sense to invoke OpenAI’s “*proposed* ESI Order,” which has not been entered. In any event, The Times is making a request for additional custodians, and if OpenAI does not agree, then we’d like to meet and confer.

Please also let us know when the “additional documents” will be produced for RFP 10. Those documents should have been produced by the June 14 substantial completion deadline.

The Times is working on a revised search term proposal based on the hit counts you provided, and we will revert.

Finally, to answer your question below, The Times applied its search terms to email data, mobile data, Slack data, hard drive data, personal drive data, and LinkedIn data. The timeframes searched are included in our June 12 hit report that we provided to you. The hit counts have increased since June 12 due to additional data being processed, and we will be providing an updated report.

Best,  
Alex

**Alexander P. Frawley | Susman Godfrey LLP**

One Manhattan West, 50th Floor | New York, NY 10001  
212.729.2044 (office) | 917.599.6613 (cell)  
[afrawley@susmangodfrey.com](mailto:afrawley@susmangodfrey.com) | [www.susmangodfrey.com](http://www.susmangodfrey.com)

---

**From:** Sexauer, Kenneth Edward <[KSexauer@mofo.com](mailto:KSexauer@mofo.com)>

**Sent:** Tuesday, June 25, 2024 6:17 PM

**To:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>; KVP-OAI <[KVPOAI@keker.com](mailto:KVPOAI@keker.com)>;  
[openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>;  
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**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)

**Subject:** RE: NYT v. Microsoft et al.

**EXTERNAL Email**

Counsel:

I write to address the remaining questions in your June 14 correspondence regarding search terms. While we don't believe we are obligated to provide all of the information you seek, we are doing so as a matter of professional courtesy.

**First**, OpenAI has already identified the custodians most likely to have responsive information. Plaintiff has not demonstrated good cause for the addition of more custodians. OpenAI is already over the 10-custodian limit that the parties agreed would govern in the absence of a court order. And per paragraph 4 of OpenAI's proposed ESI order, unless and until the Plaintiff shows good cause to add a custodian (or OpenAI agrees to add a custodian), there is no obligation triggered under paragraph 5. OpenAI therefore respectfully declines The Times' request that the search terms be run on additional custodians.

**Second**, as a general matter, the responsive communications OpenAI has produced are sufficient to show which OpenAI personnel have knowledge regarding OpenAI's text generation AI models and related business matters. Moreover, additional documents responsive to RFP 10 will be produced in due course.

**Third**, the hit counts in the reports are derived from Slack and G Suite hits. OpenAI has not limited its searches or hit reports by type of document.

**Fourth**, OpenAI has collected documents from the earliest timeframe possible for each custodian. If we plan to limit searches by timeframe going forward for some reason or for particular requests, we will let you know. We reserve the right to do so, as OpenAI is not obligated to search for and produce all documents that hit on any search term without regard to time period.

**Finally**, please provide information regarding what repositories the Times is applying its search terms to, including whether it includes Slack, and what timeframe the Times is searching.

Best,  
Ken

---

**From:** Sexauer, Kenneth Edward

**Sent:** Thursday, June 20, 2024 9:27 AM

**To:** 'Alex Frawley' <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>; KVP-OAI <[KVPOAI@keker.com](mailto:KVPOAI@keker.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>; [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](mailto:NewYorkTimes_Microsoft_OHS@orrick.com); #NewYorkTimes-Microsoft-FDBR <[NewYorkTimes-Microsoft-FDBR@faegredrinker.com](mailto:NewYorkTimes-Microsoft-FDBR@faegredrinker.com)>

**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)

**Subject:** RE: NYT v. Microsoft et al.

Counsel:

A partial search term hit report for The New York Times' proposed terms is attached. Eight of the terms could not be run in our system because the leading wildcard for "\*AI\*" and trailing wildcard for "generative a\*" caused too many index matches, which triggered an error in the system. The attached report reflects the hits based on the proposed terms, minus the terms that could not be run on our system, on the same universe of documents OpenAI ran its terms, and excluding documents already reviewed by OpenAI. Even without the error-inducing terms and the already-reviewed documents, the proposed terms yielded over 2 million novel hits including families. Review of such a large number of terms would be overly burdensome and disproportionate to the needs of the case. Accordingly, OpenAI rejects the proposal and requests that Plaintiff propose a narrower set of terms.

We will respond to your other questions in due course.

Best,  
Ken

**Ken Sexauer**

Associate

[ksexauer@mofo.com](mailto:ksexauer@mofo.com)

T: +1 (212) 336-4090

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[mofo.com](https://mofo.com) | [LinkedIn](#) | [Twitter](#)

---

**From:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>

**Sent:** Friday, June 14, 2024 9:43 PM

**To:** KVP-OAI <[KVPOAI@keker.com](mailto:KVPOAI@keker.com)>; [openaicopyrightlitigation.lwteam@lw.com](mailto:openaicopyrightlitigation.lwteam@lw.com); OpenAICopyright <[OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com)>; [NewYorkTimes\\_Microsoft\\_OHS@orrick.com](mailto:NewYorkTimes_Microsoft_OHS@orrick.com); #NewYorkTimes-Microsoft-FDBR <[NewYorkTimes-Microsoft-FDBR@faegredrinker.com](mailto:NewYorkTimes-Microsoft-FDBR@faegredrinker.com)>

**Cc:** [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)

**Subject:** NYT v. Microsoft et al.

**External Email**

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Counsel,

Attached please find The Times's counter-proposal for search terms to be run on OpenAI's custodians' ESI. This proposal also includes The Times's request for additional OpenAI custodians. The Times reserves the right to propose additional search terms and custodians, including based on its review of OpenAI's recent and forthcoming document productions.

We also have a few questions. First, can you please let us know if OpenAI has already made its document production in response to RFP 10 and if so, can you please identify the bates number(s)? Second, for the hit counts you provided to us, can you please clarify whether those hit counts cover all types of documents (e.g., emails, chats, presentations, etc) or, alternatively, whether the hit counts only cover certain categories of documents? Finally, did OpenAI apply a particular timeframe for its investigation and production of documents in response to these RFPs?

Thank you.

Best,  
Alex

**Alexander P. Frawley | Susman Godfrey LLP**  
One Manhattan West, 50th Floor | New York, NY 10001  
212.729.2044 (office) | 917.599.6613 (cell)  
[afrawley@susmangodfrey.com](mailto:afrawley@susmangodfrey.com) | [www.susmangodfrey.com](http://www.susmangodfrey.com)

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